

Exhibit 3

Declaration of Jordan Wishnew

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

_____)	
In re:)	Case No. 12-12020 (MG)
)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,)	Chapter 11
)	
Debtors.)	Jointly Administered
_____)	

**DECLARATION OF JORDAN WISHNEW IN SUPPORT OF THE RESCAP
BORROWER TRUST’S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY
JUDGEMENT AS TO ITS OBJECTION TO AMENDED CLAIM NO 4445 FILED BY
ALAN MOSS**

Jordan A. Wishnew, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury:

1. I am an attorney in the law firm of Morrison & Foerster LLP (“M&F”). M&F maintains offices for the practice of law, among other locations in the United States and worldwide, at 250 West 55th Street, New York, NY 10019. I am an attorney duly admitted to practice before this Court and the courts of the State of New York. By this Court’s Order entered on July 16, 2012, M&F was retained as counsel to Residential Capital, LLC and its affiliated debtors (the “Debtors”). Following the Effective Date,¹ M&F has been retained as counsel to the ResCap Borrower Claims Trust (the “Trust”).

2. Attached hereto as Exhibit A is a true and correct copy of Alan Moss’ Amended Responses to the Trust’s Requests for Admission, dated January 20, 2017.

¹ Unless otherwise indicated herein, capitalized terms shall have the meanings ascribed to them in the *ResCap Borrower Claims Trust’s Ninety-Fifth Omnibus Objection to Claims ((I) No Liability Borrower Claims, (II) Reduce and Allow Borrower Claims, and (III) Allow in Full Borrower Claim* (the “Objection”)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in New York, New York on February 13, 2017

/s/ Jordan A. Wishnew

Jordan A. Wishnew

Exhibit A

1 Alan Moss
In Pro Per
2 P.O. Box 721
Moss Beach CA 94038
3 Telephone: (415)494-8314
Facsimile: (650)728-0738

4 In Propria Personum
5
6
7

8 IN THE UNITED STATES BANKRUPTCY COURT
9 IN AND FOR THE SOUTHERN DISTRICT OF NEW YORK
10
11

12 IN RE

) BANKRUPTCY CASE No. 12-12020-MG
) CHAPTER 11
)

14 RESIDENTIAL CAPITAL LLC, et al,)
15)
16)

) Jointly Administered
) (Executive Trustee Services, Case No.
) 12-12028)
)

) [Claim No. 4445]
)
)

18 Debtors.)
19)

) **CREDITOR ALAN MOSS' AMENDED**
) **RESPONSES TO REQUEST FOR**
) **ADMISSIONS FROM DEBTOR**
) **RESCAP**

21 **PROPOUNDING PARTY: DEBTOR RESCAP Borrowers Claims Trust**

22 **RESPONDING PARTY: CLAIMANT ALAN MOSS**

23 **DISCOVERY DOCUMENT: REQUESTS FOR ADMISSION**

24 **SET NUMBER: ONE(1)**

25 Pursuant to Rules 7026 and 7036 of the Federal Rules of Bankruptcy
26

1 Procedure, Rules 26 and 36 of the Federal Rules of Civil Procedure, the Claimant hereby
2 objects and responds to the Borrowers Trust First Set of Requests For Admission dated
3 November 11, 2016.

4 **GENERAL OBJECTIONS**

- 5 1. The Claimant objects to the Requests to the extent that they seek to impose
6 a burden or obligation beyond those required or permitted by the Federal
7 Rules of Bankruptcy Procedure, the Local Rules of this Court, other
8 applicable law, or any order of the Court.
- 9 2. The Claimant objects to the Requests to the extent they are overly broad,
10 unduly burdensome or seek information that is not relevant to the
11 outstanding disputed issue of fact defined by the Bankruptcy Court in this
12 litigation, or are otherwise outside the scope of discovery permitted by the
13 Federal Rules of Bankruptcy Procedure. The Claimant also objects to the
14 Requests to the extent they are vague and ambiguous.
- 15 3. The Borrower Trust objects to each Request to the extent that they seek a
16 legal conclusion. *See Shultz v. Wilson Bldg., Inc.* 1969 U.S. Dist. LEXIS
17 9386 (S.D. Tex. August 14, 1969)(holding “requests for admissions which
18 [n]ecessitate a legal conclusion are generally considered objectionable.”);
19 *Norley v. HSBC Bank USA*, No. 03-cv-2318, 2003 WL 22890402, at
20 *2(SDNY Dec. 9, 2003)(dismissing “request for admissions as improper
21 because the admissions sought legal conclusions”); *Samborski v. Linear*
22 *Abatement Corp.*, NO. 96-cv-1405, 1997 WL 55949, at *1(SDNY Feb. 11,
23 1997)(holding the requests need not be answered because they “do not ask
24 for admissions of fact but instead call for plaintiffs to draw legal
25 conclusions.”); *Rivers Elec. Co., Inc. V. 4.6 Acres of Land Located In*
26

1 *Town of Catskill, County of Greene*, No. 89-cv-442, 1991 WL 255374, at
2 *4(NDNY Nov. 25, 1991)(holding requests that call for “legal conclusions
3 [are] not the proper subject matter for...a request for admissions”); *English*
4 *v. Cowell*, 117 F.R.D. 132, 135(C.D. Ill. 1986)(holding plaintiffs’ request
5 for admission that the defendant was subject to statutes relevant to the
6 action “calls for a legal conclusion and therefore it is beyond the scope of
7 a request for admissions”); *Golden Valley Microwave Foods, Inc. v.*
8 *Weaver Popcorn Co., Inc.*, 130 F.R.D. 92(N.D.Ind. 1990)(holding alleged
9 patent infringer’s requests for admissions seeking from from patent holder
10 bald legal conclusion that certain patent claims were invalid were improper.)

11 4. Rather than admitting or denying any Request to Admit, the Claimant
12 reserves the right to respond by stating an objection. *See Russo v. Baxter*
13 *healthcare Corp.* 51 F.Supp. 2d 70, 78(D.R.I. 1999)(“Where a party has
14 objected to a request for admission the burden is on the requesting party to
15 move for an order to test the validity of the objection.”)(citing Fed.R.Civ.P.
16 36 advisory committee’s note(“The requirement that the objecting party
17 move automatically for a hearing is eliminated, and the burden is on the
18 requesting party to move for an order.)).

19 5. The Claimant objects to the Requests to the extent they seek information
20 that is protected by the attorney-client privilege, that is protected by the
21 work product doctrine, that was prepared in anticipation of litigation, that
22 constitutes or discloses the mental impressions, conclusions, opinions, or
23 legal theories of an attorney or other representative of the Claimant
24 concerning this or any other litigation, or that are protected by any other
25 privilege or doctrine. To the extent that the Interrogatories call for
26

1 information protected by the attorney-client privilege, attorney work product
2 immunity, or other privileges or immunities, such information will not be
3 provided.

4 6. The Claimant objects to the Requests to the extent they purport to require
5 the Claimant to provide information outside its possession, custody or
6 control.

7 7. The Claimant objects to any explicit or implicit characterizations of facts,
8 events, circumstances, or issues in the Requests. The Claimants responses
9 are not intended to mean that the Claimant agrees with or accepts any
10 explicit or implicit characterization of facts, events, circumstances, or
11 issues in the Requests.

12 8. The Claimant has not completed discovery or preparation for the evidentiary
13 hearing in this litigation and reserves the right to rely upon any evidence
14 subsequently discovered or that may otherwise come to light during
15 discovery. The Claimant expressly reserves the right to supplement or
16 amend these responses if and when any such additional information is
17 ascertained. These responses are made by the Claimant subject to and
18 without waiving the Claimants right to introduce, use or refer to information
19 that the Claimant presently has, but that the Claimant has not yet had
20 sufficient time to analyze and evaluate, as well as the Claimants right to
21 amend or supplement these responses in the event that any information
22 previously available to the Claimant is unintentionally omitted from these
23 responses.

24 9. The Claimant objects to the requests to the extent they seek answers to
25 questions that relate to time periods outside the period relevant to this
26

1 litigation, which is the period that the Mortgage Loan was serviced by the
2 Debtors: March 2006 through February 2013.

3 10. These responses are made without in any way waiving or intending to
4 waive:

5 (i.) any objections as to the competency, relevancy, materiality, privilege,
6 or admissibility s evidence, for any purpose, of any information
7 provided in response to the Interrogatories or the subject matter
8 thereof;

9 (ii.) the right to object on any ground to the use of the information
10 provided in response to the Interrogatories or the subject matter
11 thereof in any trial, hearing, or other stage of the proceedings;

12 (iii.) the right to object on any ground at any time to a demand for further
13 response to the Interrogatories; and/or

14 (iv.) the right at any time to revise, supplement, correct, or add to these
15 responses and objections.

16
17 **SPECIFIC OBJECTION APPLICABLE TO,**
18 **AND ASSERTED AGAINST, EACH AND EVERY INTERROGATORY**
19 **PROPOUNDED BY THE BORROWER TRUST**
20

21 Each Request For Admission propounded by the Borrower Trust has been
22 untimely propounded under the Federal Rules Of Procedure, the Federal Rules of
23 Bankruptcy Procedure and the Case Management And Scheduling Order Regarding
24 ResCap Borrower's Claims Trust's Objection To Claim Number 4445 Filed By Alan
25 Moss(PACER No. 10166, filed October 5, 2016).
26

1 According to the "Certificate of Service" attached thereto, Debtors, and each
2 of them, purportedly served interrogatories on Claimant electronically on November 11,
3 2016. The Proof of Service, done by "certification," states that it was mailed via USPS
4 overnight mail on the same date, to wit November 11, 2016. However, November 11,
5 2016 was Veterans Day and the USPS was closed for the National Holiday on that date;
6 therefore, these interrogatories could not have been, and were not, served on November
7 11, 2016. In fact, the package was allegedly accepted by the USPS on November 12,
8 2016, a Saturday, according to the USPS website "priority express mail" slip attached to
9 the package; this sets forth in handwriting that the package is scheduled to be delivered
10 on November 15, 2016.

11 By its terms, the Scheduling Order requires fact discovery to close on
12 December 13, 2016.

13 The Federal Rules of Civil Procedure controls the time requirements for the
14 service of documents in this case.

15 FRCP 5(b)(2) specifically states *inter alia*:

16 **"(b) Service: How Made**

17 **(2) Service In General**

18 (C): mailing it to persons last known address--in which
19 event service is complete upon mailing;

20 (E) sending it by electronic means *if the person consented*
21 *in writing*-- in which event service is complete upon
22 transmission, but is not effective if the serving party
23 learns that it did not reach the person to be served..."

24
25 Further, FRCP 6 provides in relevant part:
26

1 **“FRCP 6: Computing and extending time:**

2 **(a) Computing Time:**

3 The following rules apply in computing any time period
4 specified in these rules:

5 **(1.) Period Stated in days or a longer unit:**

6 **(d) Additional Time After Certain Kinds of Service:**

7 When a person may or must act within a specified time
8 after being served and service is made under Rule
9 5(b)(2)(C), (D), (E) or (F), 3 days are added after the
10 period would otherwise expire under Rule 6(a).¹

11 First, regarding electronic service under FRCP 5(b)(2)(E), there is no
12 “consent in writing” in existence to being served electronically as required by FRCP
13 5(b)(2)(E). Even if there was such consent, the three additional days would make service
14 untimely.

15 Second, regarding service by mail, adding three days to November 12, 2016
16 results in a due date of December 15, 2016, two days after the date of fact discovery cut-
17 off.

18 Therefore, these Interrogatories were propounded too late and are untimely.
19 Accordingly, no responses are due.

20 **FURTHER SPECIFIC OBJECTION APPLICABLE TO,**
21 **AND ASSERTED AGAINST, EACH AND EVERY INTERROGATORY**
22 **PROPOUNDED BY THE BORROWER TRUST**

23
24 ¹ This text is effective until December 1, 2016. An amended version became effective December
25 1, 2016 which eliminated the requirement of 3 additional days on electronic service. Since the “triggering”
26 event occurred prior to December 1, 2016, it is the quoted version which is controlling.

1 These amended responses, and each of them, are being provided pursuant
2 to Court Order dated January 11, 2017. It is Claimant's position that this Order is
3 erroneous and without legal foundation, and that in overruling Claimant's original
4 responses and objections, the Court erred and violated the Federal Rules of Civil
5 Procedure. This objection is reserved for further proceedings, if and when this matter
6 is appealed.

7
8 **RESPONSES TO REQUESTS FOR ADMISSION**

9 **REQUEST FOR ADMISSION NO. 1:**

10 On June 22, 2005, CJM provided You the Mortgage Loan in the principal amount
11 of \$612,500.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

13 This Request for Admission is objected to on the basis that it is vague and
14 ambiguous as to the term Mortgage Loan. There is no such thing in California.

15
16 **REQUEST FOR ADMISSION NO. 2:**

17 The Mortgage Loan is evidenced by a Note to CJM executed by the Claimant on
18 June 22, 2005 (the "Note").

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

20 This Request for Admission is objected to on the basis that it is vague and
21 ambiguous as to the term Mortgage Loan. There is no such thing in California.

22
23 **REQUEST FOR ADMISSION NO. 3:**

24 The Mortgage Loan is secured by a deed of trust on the Property (the "Deed of
25 Trust").

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

2 This Request for Admission is objected to on the basis that it is vague and
3 ambiguous as to the term Mortgage Loan. There is no such thing in California.

4
5 **REQUEST FOR ADMISSION NO. 4:**

6 GMACM serviced the Mortgage Loan from March 14, 2006 until February 16,
7 2013.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

9 This Request for Admission is objected to on the basis that it is vague and
10 ambiguous as to the term Mortgage Loan. There is no such thing in California.

11
12 **REQUEST FOR ADMISSION 5:**

13 The Deed of Trust required the Claimant to make monthly payments on the
14 Mortgage Loan on the first day of each month, beginning with August 1, 2005.

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

16 This Request for Admission is objected to on the basis that it is vague and
17 ambiguous as to the term Mortgage Loan. There is no such thing in California.

18
19 **REQUEST FOR ADMISSION NO. 6:**

20 On or around April 12, 2006, the Claimant received a letter indicating that the
21 mortgage loan was in default and owing for the August 1, 2005 payment.

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

23 Subject to and without waiving its objections, this RFA is Denied on the basis that,
24 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
25 sufficient information to be able to admit or deny this RFA.

26

1 **REQUEST FOR ADMISSION NO. 7:**

2 After making a payment on or around April 13, 2006, the Mortgage Loan was
3 owing for the March 1, 2006 payment.

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

5 .

6
7 **REQUEST FOR ADMISSION NO. 8:**

8 The Claimant did not timely make the monthly payment due on the Mortgage Loan
9 on March 1, 2006.

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

11 Subject to and without waiving its objections, this RFA is Denied on the basis that,
12 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
13 sufficient information to be able to admit or deny this RFA.

14
15 **REQUEST FOR ADMISSION NO. 9:**

16 The Claimant did not timely make the monthly payment due on the Mortgage Loan
17 on April 1, 2006.

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

19 Subject to and without waiving its objections, this RFA is Denied on the basis that,
20 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
21 sufficient information to be able to admit or deny this RFA.

22 **REQUEST FOR ADMISSION NO. 10:**

23 The Claimant did not timely make the monthly payment due on the Mortgage Loan
24 on May 1, 2006.

25 ///

26

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

2 Subject to and without waiving its objections, this RFA is Denied on the basis that,
3 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
4 sufficient information to be able to admit or deny this RFA.

5
6 **REQUEST FOR ADMISSION 11:**

7 On or around May 15, 2006, the Claimant made a payment on the Mortgage Loan
8 that paid the payment due on March 1, 2006.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

10 Subject to and without waiving its objections, this RFA is Denied on the basis that,
11 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
12 sufficient information to be able to admit or deny this RFA.

13
14 **REQUEST FOR ADMISSION NO. 12:**

15 On or around May 15, 2006, the Claimant received a letter indicating that the
16 mortgage loan was in default and owing for the April 1, 2006 payment.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

18 Subject to and without waiving its objections, this RFA is Denied on the basis that,
19 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
20 sufficient information to be able to admit or deny this RFA.

21
22 **REQUEST FOR ADMISSION NO. 13:**

23 The Claimant did not timely make the monthly payment due on the Mortgage Loan
24 on June 1, 2006.

25 ///

26

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

2 Subject to and without waiving its objections, this RFA is Denied on the basis that,
3 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
4 sufficient information to be able to admit or deny this RFA.

5
6 **REQUEST FOR ADMISSION NO. 14:**

7 As of June 16, 2006, the Mortgage Loan was owing for the April 1, 2006 payment.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

9 Subject to and without waiving its objections, this RFA is Denied on the basis that,
10 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
11 sufficient information to be able to admit or deny this RFA.

12
13 **REQUEST FOR ADMISSION NO. 15:**

14 The Claimant did not timely make the monthly mortgage payment due on the
15 Mortgage Loan on July 1, 2006.

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

17 Subject to and without waiving its objections, this RFA is Denied on the basis that,
18 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
19 sufficient information to be able to admit or deny this RFA.

20
21 **REQUEST FOR ADMISSION NO. 16:**

22 The Claimant did not timely make the monthly mortgage payment due on the
23 Mortgage Loan on August 1, 2006.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

25 Subject to and without waiving its objections, this RFA is Denied on the basis that,
26

1 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
2 sufficient information to be able to admit or deny this RFA.

3
4 **REQUEST FOR ADMISSION NO. 17:**

5 The Claimant did not timely make the monthly mortgage payment due on the
6 Mortgage Loan on September 1, 2006.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 17:**

8 Subject to and without waiving its objections, this RFA is Denied on the basis that,
9 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
10 sufficient information to be able to admit or deny this RFA.

11
12 **REQUEST FOR ADMISSION NO. 18:**

13 The Claimant did not timely make the monthly mortgage payment due on the
14 Mortgage Loan on October 1, 2006.

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 18:**

16 Subject to and without waiving its objections, this RFA is Denied on the basis that,
17 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
18 sufficient information to be able to admit or deny this RFA.

19
20 **REQUEST FOR ADMISSION NO. 19:**

21 The Claimant did not timely make the monthly mortgage payment due on the
22 Mortgage Loan on November 1, 2006.

23
24 **RESPONSE TO REQUEST FOR ADMISSION NO. 19:**

25 Subject to and without waiving its objections, this RFA is Denied on the basis that,
26

1 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
2 sufficient information to be able to admit or deny this RFA.

3

4 **REQUEST FOR ADMISSION NO. 20:**

5 The Claimant did not timely make the monthly mortgage payment due on the
6 Mortgage Loan on December 1, 2006.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 20:**

8 Subject to and without waiving its objections, this RFA is Denied on the basis that,
9 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
10 sufficient information to be able to admit or deny this RFA.

11

12 **REQUEST FOR ADMISSION NO. 21:**

13 On or around December 1, 2006, the Claimant spoke to a representative at
14 GMACM and agreed to a repayment plan(the "First Repayment Agreement") that included
15 a deposit of \$30,000.00 due by December 8, 2006 and five remaining monthly payments
16 of \$11,700 per month.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 21:**

18 Subject to and without waiving its objections, this RFA is Denied on the basis that,
19 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
20 sufficient information to be able to admit or deny this RFA.

21

22 **REQUEST FOR ADMISSION NO. 22:**

23 On or around December 11, 2006, the Claimant made a payment on the Mortgage
24 Loan of \$30,000 which covered the April through August 2006 mortgage payments,
25 making the Mortgage Loan owing for the September 1, 2006 payment.

26

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 22:**

2 Subject to and without waiving its objections, this RFA is Denied on the basis that,
3 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
4 sufficient information to be able to admit or deny this RFA.

5
6 **REQUEST FOR ADMISSION NO. 23:**

7 On or around January 16, 2007, the Claimant made a payment on the Mortgage
8 Loan of \$12,067.27 which covered the September and October 2006 mortgage payments,
9 making the Mortgage Loan owing for November 1, 2006.

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

11 Subject to and without waiving its objections, this RFA is Denied on the basis that,
12 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
13 sufficient information to be able to admit or deny this RFA.

14
15 **REQUEST FOR ADMISSION NO. 24:**

16 On or around February 10, 2007, the Claimant made a payment on the Mortgage
17 Loan of \$12,000 which covered the November and December 2006, making the
18 Mortgage Loan owing for the January 1, 2007 payment.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

20 Subject to and without waiving its objections, this RFA is Denied on the basis that,
21 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
22 sufficient information to be able to admit or deny this RFA.

23
24 **REQUEST FOR ADMISSION 25:**

25 On or around March 21, 2007, the Claimant made a payment on the Mortgage
26

1 Loan of \$12,000 which covered the January and February 2007, making the Mortgage
2 Loan owing for the March 1, 2007 payment.

3 **RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

4 Subject to and without waiving its objections, this RFA is Denied on the basis that,
5 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
6 sufficient information to be able to admit or deny this RFA.

7
8 **REQUEST FOR ADMISSION NO. 26:**

9 On or around April 16, 2007, the Claimant received a letter indicating that the
10 mortgage loan was in default and owing for the March 1, 2007 payment.

11 **RESPONSE TO REQUEST FOR ADMISSION NO. 26:**

12 Subject to and without waiving its objections, this RFA is Denied on the basis that,
13 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
14 sufficient information to be able to admit or deny this RFA.

15
16 **REQUEST FOR ADMISSION NO. 27:**

17 On or around April 16, 2007, the Claimant spoke with a representative of GMACM
18 and was advised that the First Repayment Plan was cancelled due to non-payment.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 27:**

20 Subject to and without waiving its objections, this RFA is Denied on the basis that,
21 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
22 sufficient information to be able to admit or deny this RFA.

23
24 **REQUEST FOR ADMISSION NO. 28:**

25 The Claimant made a payment on or around April 23, 2007 that covered the March
26

1 1 and April 1, 2007 payment.

2 **RESPONSE TO REQUEST FOR ADMISSION NO. 28:**

3 Subject to and without waiving its objections, this RFA is Denied on the basis that,
4 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
5 sufficient information to be able to admit or deny this RFA.

6
7 **REQUEST FOR ADMISSION NO. 29:**

8 The Claimant did not timely make the monthly mortgage payment due on the
9 Mortgage Loan on June 1, 2007.

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 29:**

11 Subject to and without waiving its objections, this RFA is Denied on the basis that,
12 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
13 sufficient information to be able to admit or deny this RFA.

14
15 **REQUEST FOR ADMISSION NO. 30:**

16 The Claimant did not timely make the monthly mortgage payment due on the
17 Mortgage Loan on June 1, 2007.

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 30:**

19 Subject to and without waiving its objections, this RFA is Denied on the basis that,
20 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
21 sufficient information to be able to admit or deny this RFA.

22
23 **REQUEST FOR ADMISSION 31:**

24 On or around June 4, 2007, the Claimant received a letter indicating that the
25 mortgage loan was in default and owing for the May 1, 2007 payment.

26

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 31:**

2 Subject to and without waiving its objections, this RFA is Denied on the basis that,
3 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
4 sufficient information to be able to admit or deny this RFA.

5
6 **REQUEST FOR ADMISSION NO. 32:**

7 The Claimant made a payment on or around June 25, 2007 that covered the May
8 1, 2007 payment.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 32:**

10 Subject to and without waiving its objections, this RFA is Denied on the basis that,
11 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
12 sufficient information to be able to admit or deny this RFA.

13
14 **REQUEST FOR ADMISSION NO. 33:**

15 The Claimant did not timely make the monthly mortgage payment due on the
16 Mortgage Loan on July 1, 2007.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 33:**

18 Subject to and without waiving its objections, this RFA is Denied on the basis that,
19 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
20 sufficient information to be able to admit or deny this RFA.

21
22 **REQUEST FOR ADMISSION NO. 34:**

23 On or around July 3, 2007, the Claimant received a letter indicating that the
24 mortgage loan was in default and owing for the June 1, 2007 payment.

25 ///

26

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 34:**

2 Subject to and without waiving its objections, this RFA is Denied on the basis that,
3 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
4 sufficient information to be able to admit or deny this RFA.

5
6 **REQUEST FOR ADMISSION NO. 35:**

7 The Claimant made a payment on or around August 1, 2007 that covered the June
8 1, 2007 payment.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 35:**

10 Subject to and without waiving its objections, this RFA is Denied on the
11 basis that, after a reasonable inquiry was made to obtain sufficient information, Claimant
12 lacks sufficient information to be able to admit or deny this RFA.

13
14 **REQUEST FOR ADMISSION NO. 36:**

15 The Claimant did not timely make the monthly mortgage payment due on the
16 Mortgage Loan on August 1, 2007.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 36:**

18 Subject to and without waiving its objections, this RFA is Denied on the basis that,
19 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
20 sufficient information to be able to admit or deny this RFA.

21
22 **REQUEST FOR ADMISSION NO. 37:**

23 On or around August 2, 2007, the Claimant received a letter indicating that the
24 mortgage loan was in default and owing for the July 1, 2007 payment.

25 ///

26

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 37:**

2 This Request For Admission is objected to on the basis set forth hereinabove under
3 General Objections and Special Objection, each of which is incorporated herein by
4 reference as though fully set forth herein.

5
6 **REQUEST FOR ADMISSION NO. 38:**

7 The Claimant did not timely make the monthly mortgage payment due on the
8 Mortgage Loan on September 1, 2007.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 38:**

10 Subject to and without waiving its objections, this RFA is Denied on the basis that,
11 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
12 sufficient information to be able to admit or deny this RFA.

13
14 **REQUEST FOR ADMISSION NO. 39:**

15 The Claimant did not timely make the monthly mortgage payment due on the
16 Mortgage Loan on October 1, 2007.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 39:**

18 Subject to and without waiving its objections, this RFA is Denied on the basis that,
19 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
20 sufficient information to be able to admit or deny this RFA.

21
22 **REQUEST FOR ADMISSION NO. 40:**

23 The Claimant did not timely make the monthly mortgage payment due on the
24 Mortgage Loan on November 1, 2007.

25 ///

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 40:**

2 Subject to and without waiving its objections, this RFA is Denied on the basis that,
3 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
4 sufficient information to be able to admit or deny this RFA.

5
6 **REQUEST FOR ADMISSION NO. 41:**

7 The Claimant did not timely make the monthly mortgage payment due on the
8 Mortgage Loan on December 1, 2007.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 41:**

10 Subject to and without waiving its objections, this RFA is Denied on the basis that,
11 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
12 sufficient information to be able to admit or deny this RFA.

13
14 **REQUEST FOR ADMISSION NO. 42:**

15 The Claimant did not timely make the monthly mortgage payment due on the
16 Mortgage Loan on January 1, 2008.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 42:**

18 Subject to and without waiving its objections, this RFA is Denied on the basis that,
19 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
20 sufficient information to be able to admit or deny this RFA.

21
22 **REQUEST FOR ADMISSION NO. 43:**

23 The Claimant did not timely make the monthly mortgage payment due on the
24 Mortgage Loan on February 1, 2008.

25 ///

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 43:**

2 Subject to and without waiving its objections, this RFA is Denied on the basis that,
3 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
4 sufficient information to be able to admit or deny this RFA.

5
6 **REQUEST FOR ADMISSION NO. 44:**

7 The Claimant did not timely make the monthly mortgage payment due on the
8 Mortgage Loan on March 1, 2008.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 44:**

10 Subject to and without waiving its objections, this RFA is Denied on the basis that,
11 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
12 sufficient information to be able to admit or deny this RFA.

13
14 **REQUEST FOR ADMISSION 45:**

15 The Claimant did not timely make the monthly mortgage payment due on the
16 Mortgage Loan on April 1, 2008.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 45:**

18 Subject to and without waiving its objections, this RFA is Denied on the basis that,
19 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
20 sufficient information to be able to admit or deny this RFA.

21
22 **REQUEST FOR ADMISSION NO. 46:**

23 The Claimant did not timely make the monthly mortgage payment due on the
24 Mortgage Loan on May 1, 2008.

25 ///

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 46:**

2 Subject to and without waiving its objections, this RFA is Denied on the basis that,
3 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
4 sufficient information to be able to admit or deny this RFA.

5
6 **REQUEST FOR ADMISSION NO. 47:**

7 The Claimant did not timely make the monthly mortgage payment due on the
8 Mortgage Loan on June 1, 2008.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 47:**

10 Subject to and without waiving its objections, this RFA is Denied on the basis that,
11 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
12 sufficient information to be able to admit or deny this RFA.

13
14 **REQUEST FOR ADMISSION NO. 48:**

15 By or before June 11, 2008, the claimant became aware that a foreclosure sale of
16 the Property was scheduled for June 13, 2008.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 48:**

18 Subject to and without waiving its objections, this RFA is Denied on the basis that,
19 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
20 sufficient information to be able to admit or deny this RFA. Further, this RFA is objected
21 to in that it is vague and ambiguous as to the term "became aware."

22
23 **REQUEST FOR ADMISSION NO. 49:**

24 On or around June 11, 2008, the Claimant contacted GMACM by phone to request
25 a loan modification.

26

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 49:**

2 Admit that Claimant did have a conversation with debtor around that date, but in
3 all other ways, denied.

4
5 **REQUEST FOR ADMISSION NO. 50:**

6 During the conversation on or around June 11, 2008, GMACM offered the
7 Claimant a six-month foreclosure repayment agreement(the "Second Repayment
8 Agreement").

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 50:**

10 Subject to and without waiving its objections, this RFA is Denied on the basis that,
11 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
12 sufficient information to be able to admit or deny this RFA. Further, this RFA is objected
13 to on the basis that it is vague and ambiguous as to the term "Second Repayment
14 Agreement," which is an unknown term to Claimant.

15
16 **REQUEST FOR ADMISSION 51:**

17 The Second Repayment Agreement consisted of \$50,000 down payment, as well
18 as six monthly payments of \$6,740.78.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 51:**

20 Subject to and without waiving its objections, this RFA is Denied on the basis that,
21 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
22 sufficient information to be able to admit or deny this RFA. Further, this RFA is objected
23 to on the basis that it is vague and ambiguous as to the term "Second Repayment
24 Agreement," which is an unknown term to Claimant.

25 ///

1 **REQUEST FOR ADMISSION NO. 52:**

2 The Claimant paid the \$50,000 down payment required by the Second Repayment
3 Agreement on or around June 13, 2008.

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 52:**

5 Subject to and without waiving its objections, this RFA is Denied on the basis that,
6 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
7 sufficient information to be able to admit or deny this RFA. Further, this RFA is objected
8 to on the basis that it is vague and ambiguous as to the term "Second Repayment
9 Agreement," which is an unknown term to Claimant. Admit that Claimant paid \$50,000
10 to debtor somewhere around that time period, but deny that it was "required" by any so-
11 called "Second Repayment Plan."

12

13 **REQUEST FOR ADMISSION NO. 53:**

14 On or around June 13, 2008, the Claimant received a copy of the Second
15 Repayment Agreement.

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 53:**

17 Subject to and without waiving its objections, this RFA is Denied on the basis that,
18 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
19 sufficient information to be able to admit or deny this RFA. Further, this RFA is objected
20 to on the basis that it is vague and ambiguous as to the term "Second Repayment
21 Agreement," which is an unknown term to Claimant. Deny that Claimant ever received
22 any such document.

23

24 **REQUEST FOR ADMISSION NO. 54:**

25 The Claimant did not make the payment under the Second Repayment Agreement
26

1 due on July 12, 2008.

2 **RESPONSE TO REQUEST FOR ADMISSION NO. 54:**

3 Subject to and without waiving its objections, this RFA is Denied on the basis that,
4 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
5 sufficient information to be able to admit or deny this RFA. Further, this RFA is objected
6 to on the basis that it is vague and ambiguous as to the term "Second Repayment
7 Agreement," which is an unknown term to Claimant.

8
9 **REQUEST FOR ADMISSION NO. 55:**

10 The Claimant did not make the payment under the Second Repayment Agreement
11 due on August 12, 2008.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 55:**

13 Subject to and without waiving its objections, this RFA is Denied on the basis that,
14 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
15 sufficient information to be able to admit or deny this RFA. Further, this RFA is objected
16 to on the basis that it is vague and ambiguous as to the term "Second Repayment
17 Agreement," which is an unknown term to Claimant.

18
19 **REQUEST FOR ADMISSION NO. 56:**

20 On or around August 21, 2008, the Claimant sent a personal check to GMACM in
21 the amount of \$6,000.00(the "August 2008 check").

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 56:**

23 Admit that Claimant did send a check, in the approximate amount of \$6,000, at
24 some time around August 2008. In all other respects, denied.

25

26

1 **REQUEST FOR ADMISSION NO. 57:**

2 The August 2008 check was returned to the Claimant on or around August 25,
3 2008.

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 57:**

5 Subject to and without waiving its objections, this RFA is Denied on the basis that,
6 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
7 sufficient information to be able to admit or deny this RFA.

8
9 **REQUEST FOR ADMISSION NO. 58:**

10 The Claimant did not make any payments on the Mortgage Loan to GMACM after
11 the August 2008 check was returned.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 58:**

13 Subject to and without waiving its objections, this RFA is Denied on the basis that,
14 after a reasonable inquiry was made to obtain sufficient information, Claimant lacks
15 sufficient information to be able to admit or deny this RFA. Further objection on the basis
16 that this RFA assumes facts not in evidence as Claimant is not aware of, nor has admitted
17 to receiving any such check.

18
19 **REQUEST FOR ADMISSION NO. 59:**

20 The Claimant was aware of the foreclosure sale that occurred on May 7, 2009
21 prior to the date of the sale.

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 59:**

23 Objection. This RFA is vague and ambiguous as to the term "aware of" and also
24 as to time requirement necessitated by this RFA. Admit that at some point in time
25 Claimant was informed that a sale had occurred.

26

1 **REQUEST FOR ADMISSION NO. 60:**

2 On September 8, 2012, a Notice of Rescission of the Trustee's Deed Upon Sale
3 was recorded(the "Rescission").

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 60:**

5 Objection. This RFA is vague as to time and no such imputation is admitted to that
6 Claimant was informed of this document at the date stated or for months afterward. On
7 that basis, denied. However, it is admitted that such a document with that title was
8 recorded on that date, but only because it can be located on a publicly accessible website.

9
10 **REQUEST FOR ADMISSION NO. 61:**

11 The Claimant is currently in default under the terms of the Note.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 61:**

13 Denied.

14
15 **REQUEST FOR ADMISSION NO. 62:**

16 The Claimant is currently in default under the terms of the Mortgage Loan.

17 **RESPONSE TO REQUEST FOR ADMISSION NO. 62:**

18 Denied.

19
20 **REQUEST FOR ADMISSION NO. 63:**

21 A foreclosure has not been completed on the Property since the Rescission on
22 September 8, 2012.

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 63:**

24 Objection. Vague and ambiguous as to the term "completed." Claimant does not
25 know what that means in the context of California law.

26

1 **REQUEST FOR ADMISSION NO. 64:**

2 The Claimant still resides in the Property.

3 **RESPONSE TO REQUEST FOR ADMISSION NO. 64:**

4 Admit.

5
6 **REQUEST FOR ADMISSION NO. 65:**

7 The Claimant continues to hold title to the Property, subject to the Note and the
8 Deed of Trust.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 65:**

10 Admit.

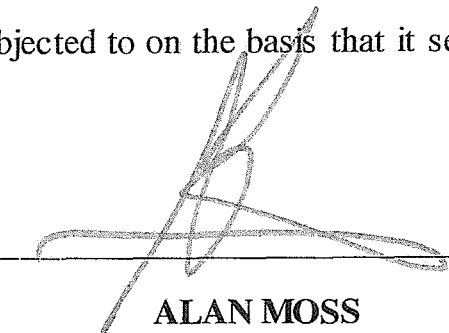
11
12 **REQUEST FOR ADMISSION NO. 66:**

13 The Claimant entered into a settlement agreement with the Bank of New York
14 Trust Company and Ocwen Loan Servicing, LLC to resolve litigation that you filed against
15 Bank of New York Trust Company.

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 66:**

17 This Request For Admission is objected to on the basis that it seeks confidential
18 information.

19
20 DATED: January 10, 2017


ALAN MOSS

Attorney In Pro Per

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22
23
24
25
26

PROOF OF SERVICE

**COURT: UNITED STATES BANKRUPTCY COURT IN AND FOR THE
SOUTHERN DISTRICT OF NEW YORK**

CASE NAME: *IN RE RESCAP, LLC ET AL.*

ACTION NO.: ACTION No. 12-12020

I am employed in the County of San Francisco, California. I am over the age of 18 and not a party to the within action. On this date, I served the foregoing document(s) described as:

**CLAIMANT'S AMENDED RESPONSES TO REQUEST FOR ADMISSIONS
PROPOUNDED BY DEBTOR RESCAP**

on the party(ies) set out in said document by causing a true copy thereof to be:

- ☐ Delivered via e-mail to the e-mail address set forth below next to the recipient's name.
- ☐ By U.S. mail, by placing said document(s) in a sealed envelope with first class postage thereon fully prepaid, and then placed in the designated office area for outgoing mail.
- ☐ By U.S. mail, Return Receipt Requested, by placing said document(s) in a sealed envelope with appropriate postage thereon fully prepaid and then placed in the designated office area for outgoing mail.
- ☐ Delivered by hand to the person or person's office set forth below, or by handing said document in a sealed envelope to a messenger service for delivery as addressed.
- ☐ Sent via Priority overnight mailing, by handing said document in a sealed envelope to an agent for the USPS for overnight delivery.

and if mailed, addressed as follows and sent to the following address(es):

Jessica Arett, Esq.(j.aret@mofo.com)
MORRISON & FOERSTER
250 West 55th Street
New York NY 10019

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 20 nd day of January, 2017, at San Francisco, California.